

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BENJAMIN ALLEN SWITEK,
Plaintiff,

v.

MIDLAND COUNTY ,
Defendant.
_____ /

Case No.: 21-12711

Matthew F. Leitman
United States District Judge

Curtis Ivy, Jr.
United States Magistrate Judge

**ORDER DENYING MOTION TO COMPEL (ECF No. 23) AND MOTION
FOR DEFAULT JUDGMENT (ECF No. 25)**

On October 20, 2022, Plaintiff moved to compel Defendant Midland County to respond to his interrogatories and requests for documents. His motion includes his discovery requests. (ECF No. 23). A returned green card purporting to signify service of the complaint on Midland County was filed September 29, 2022. The County has yet to appear by an answer or other response to the complaint.

The motion to compel is **DENIED** for two reasons.

First, submitted discovery requests to a party through the Court's electronic filing system is improper under Eastern District of Michigan Local Rule 26.2 and Fed. R. Civ. P. 5(d)(1). Discovery requests must be made in accordance with Fed. R. Civ. P. 26 through 37 if and when the time for discovery begins. *See* Fed. R. Civ. P. 26-37. That is, discovery requests must be directed to the defendant, not

filed with the Court. As a result, Plaintiff's motion is due to be denied as it is an improper means of submitting discovery to the defendant.

Second, the motion to compel is premature. The federal rules allow for discovery in prisoner civil rights litigation, like this case, to begin without a Rule 26(f) conference. In this District, discovery in prisoner civil rights cases commences after the Court issues a case management order. The Court will issue a case management order that will govern the course of discovery between Plaintiff and Midland County after the County has answered the complaint.

On October 31, 2022, Plaintiff moved for default judgment against Midland County. (ECF No. 25). This motion is **DENIED**. Under 42 U.S.C. § 1997e(g)(1), relief cannot be granted to a prisoner civil rights plaintiff unless the defendant has filed a response to the complaint. Defendant has not responded to the complaint. The Court will take appropriate action regarding the Defendant's response in due course.

IT IS SO ORDERED.

The parties here may object to and seek review of this Order, but are required to file any objections within 14 days of service as provided for in Federal Rule of Civil Procedure 72(a) and Local Rule 72.1(d). A party may not assign as error any defect in this Order to which timely objection was not made. Fed. R. Civ. P. 72(a). Any objections are required to specify the part of the Order to which

the party objects and state the basis of the objection. When an objection is filed to a magistrate judge's ruling on a non-dispositive motion, the ruling remains in effect unless it is stayed by the magistrate judge or a district judge. E.D. Mich. Local Rule 72.2.

Date: December 9, 2022

s/Curtis Ivy, Jr.

Curtis Ivy, Jr.

United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that this document was served on counsel of record and any unrepresented parties via the Court's ECF System or by First Class U.S. mail on December 9, 2022.

s/Kristen MacKay

Case Manager

(810) 341-7850